

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

**KANSAS CITY SOUTHERN RAILWAY
AI # 8889**

**PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT
LA. R.S. 30:2001, ET SEQ.**

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* **Enforcement Tracking No.**
* **WE-CN-00-0006**
* **Docket No. 2003-8268-EQ**
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* **Enforcement Tracking No.**
* **MM-CN-03-0040**

SETTLEMENT

The following Settlement is hereby agreed to between Kansas City Southern Railway ("Respondent") and the Department of Environmental Quality ("DEQ" or "the Department") under authority granted by the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq. ("the Act").

I

Respondent is a corporation who operates a railroad yard facility located at 4601 Blanchard Highway in Shreveport, Caddo Parish, Louisiana ("the Facility").

II

On June 30, 2003, the Department issued a Consolidated Compliance Order and Notice of Potential Penalty (CONOPP), Enforcement No. WE-CN-00-0006, to Respondent, which was based upon the following findings of fact:

The Respondent was authorized to discharge storm water runoff, treated sanitary wastewater, and washwater to Cross Lake and Twelve Mile Bayou via unnamed ditches, all waters of the state, under the terms and conditions of Louisiana Water Discharge Permit System

(LWDPS) permit WP1733 issued on April 24, 1995, with an expiration date of April 23, 2000.

On June 6, 2000, the Respondent requested extension of its LWDPS permit and was denied. A LPDES permit renewal application was received by the Department on or about August 28, 2000.

The Respondent was issued LPDES permit LAG480022 on November 3, 2001, with an expiration date of July 31, 2006. The Respondent is authorized to discharge storm water runoff, treated sanitary wastewater, and washwater to Cross Lake and Twelve Mile Bayou via unnamed ditches, all waters of the state.

An inspection conducted by the Department on or about January 29, 1999, revealed that the Respondent did cause or allow the emergency bypass of wastewater from an impoundment to a roadside ditch, thence into Cross Lake and Twelve Mile Bayou, both waters of the state. Analyses of ten samples from the discharge revealed oil and grease values ranging from 20.6 mg/L to 30.0 mg/L; the daily maximum permit limit was 15 mg/L. Each exceedance of a daily maximum permit limitation is in violation of LWDPS permit WP1733, (Part I, Page 2 and Part III, Section A.1), La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2355.A.

An inspection conducted by the Department on or about June 7, 2000, revealed that the Respondent did cause or allow the emergency bypass of wastewater on or about April 5, 1999, from an impoundment to a roadside ditch, thence into Cross Lake and Twelve Mile Bayou, both waters of the state. Analyses of samples from this discharge revealed oil and grease values ranging from 30 mg/L to 39 mg/L (maximum permit limit is 15 mg/L) and TSS values ranging from 56 to 77 mg/L (maximum permit limit is 50 mg/L). Each exceedance of daily maximum permit limitations is in violation of LWDPS permit WP1733, (Part I, Page 2 of 6, Part II, Section

7. and Part III, Section A.1). La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2355.A.

A file review conducted by the Department on or about December 23, 2002, revealed that the Respondent failed to monitor the April 5, 1999, bypass for all effluent characteristics applicable to Outfall 001. The Respondent's failure to properly monitor the bypass is in violation of LWDPs permit WP1733 (Part III, Section A.1, Part III, Section B.3.c), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2771. Also, the Respondent failed to submit a written report of its emergency bypass within five days in violation of LWDPs permit WP1733 (Part III, Section A.1 and Part III, Section D.5.b.2.a), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.L.6.a. Furthermore, the Respondent failed to include the date and time of the verbal notification and the name of the person making the notification in its report dated February 4, 1999. The failure to include the above-mentioned information in the report is in violation of LWDPs permit WP1733 (Part III, Section A.1 and Part III, Section D.5.d.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2355.A.

A file review of the Discharge Monitoring Reports (DMRs) conducted on June 19, 2003, for the monitoring periods from September 1996 through March 2003 revealed the following permit violations:

DATE	OUTFALL NUMBER	PARAMETER	PERMIT LIMIT	SAMPLE VALUE ¹	UNITS
2/21/2003	005	TSS	45	306 (daily max)	mg/L
10/02	001	TSS	45	140 (daily max)	mg/L
		O & G	15	30.5 (daily max)	mg/L
10/29/02	001	TSS	45	140 (daily max) ²	mg/L
		O&G	15	30.5 (daily max) ²	mg/L

DATE	OUTFALL NUMBER	PARAMETER	PERMIT LIMIT	SAMPLE VALUE ¹	UNITS
9/02	001	COD	200	500	mg/L
		COD	300	890	mg/L
		O&G	15	155	mg/L
9/19/02	003	O&G	15	33 (daily max) ²	mg/L
9/12/02	003	O&G	15	155 (daily max) ²	mg/L
9/12/02	001	COD	300	890 (daily max) ²	mg/L
8/02	001	TSS	50	130 (daily max)	mg/L
		COD	200	290 (monthly avg.)	mg/L
		O&G	15	97 (daily max)	mg/L
8/13/02	001	TSS	45	130 (daily max) ²	mg/L
		O&G	15	97 (daily max) ²	mg/L
7/02	001	TSS	50	103 (daily max)	mg/L
		O & G	15	35 (daily max)	mg/L
7/29/02	002	O&G	15	53.4 (daily max) ²	mg/L
7/29/02	003	O&G	15	48.2 (daily max) ²	mg/L
7/29/02	004	O&G	15	51.3 (daily max) ²	mg/L
7/17/02	001	TSS	50	103 (daily max) ²	mg/L
		COD	15	35 (daily max) ²	mg/L
		O&G	15	35 (daily max) ²	mg/L
6/26/02	003	O&G	15	34.9 (daily max) ²	mg/L
12/17/01	001	O&G	15	21.8 (daily max) ²	mg/L
04/00	001	TSS	50	77 (daily max) ²	mg/L
		Oil and Grease	15	39 (daily max) ²	mg/L
04/00	201	Fecal Coliform	400	2,000 (daily max) ²	Colonies/100 ml
03/00	201	Fecal Coliform	200	5,000 (daily avg.)	Colonies/100 ml
		Fecal Coliform	400	5,000 (daily max)	Colonies/100 ml
12/99	201	TSS	50	76.0 (daily max)	mg/L
08/99	201	Fecal Coliform	200	630 (daily avg.)	Colonies/100 ml
		Fecal Coliform	400	630 (daily max)	Colonies/100 ml
11/98	001	COD	300	374 (daily max)	mg/L
7/98	001	Oil & Grease	15	30 (daily max)	mg/L
	001	COD	200	432 (daily avg.)	mg/L
	001	COD	300	432 (daily max)	mg/L
1/98	001	Oil & Grease	15	18.3 (daily max)	mg/L
11/97	001	Oil & Grease	15	16.0 (daily max)	mg/L
10/97	001	Oil & Grease	15	18.4 (daily max)	mg/L
9/97	001	Oil & Grease	15	17.2 (daily max)	mg/L
8/97	001	Oil & Grease	15	42.7 (daily max)	mg/L

¹As reported on Respondent's DMRs if not otherwise specified.

²As reported by Respondent's written report of its bypass.

Each effluent excursion before April 23, 2000, is in violation of LWDPs permit WP1733 (Part I, Page 2 and 3 and Part III, Section A.1), La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2355.A. Each effluent excursion after November 3, 2001, is in violation of LPDES permit LAG480022 (Part I, Section A, and Part III, Section A.2), La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2355.A.

A file review conducted by the Department on or about June 11, 2002, disclosed that the Respondent failed to submit an application for the renewal of its permit prior to 180 days of the expiration date. The Respondent's failure to submit its permit application in a timely manner constitutes a violation of LWDPs Permit WP1733 (Part III, Section A.1, and Part III, Section D.8), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2331.D, and LAC 33:IX.2355.B.

Further review conducted by the Department on or about June 11, 2002, disclosed that the Respondent continued to discharge wastewater to waters of the state after the expiration date of its permit LWDPs permit WP1733 and before the issuance of permit LAG480022. All discharges between April 23, 2000, and November 3, 2001, are in violation of La. R.S. 30:2075, La. R.S. 30:2076 (A) (1) (a), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.C, LAC 33:IX.501.D, and LAC 33:IX.2311.A.1.

An inspection was conducted on or about December 3, 2002, which revealed no areas of concern were noted.

III

In response to the CONOPP, Enforcement No. WE-CN-00-0006, Respondent made a timely request for a hearing.

IV

On September 18, 2003, the Department issued Consolidated Compliance Order and Notice of Potential Penalty (CONOPP), Enforcement No. MM-CN-03-0040 to Respondent which was based upon the following findings of fact:

The Respondent owns and/or operates a railway facility known as The Kansas City Southern Railway Company located at 4601 Blanchard Road in Shreveport, Caddo Parish, Louisiana. The facility operates under EPA ID number LAT230013104 and Solid Waste Standard Permit Number P-0272.

On or about November 25, 2002, an inspection conducted by the Department and a subsequent file review revealed the following violations:

- A. The Respondent failed to file the Annual Hazardous Waste Report for the year 2001, in violation of LAC 33:V.1111.B.1. This violation was corrected on March 6, 2003.
- B. The Respondent failed to notify the Department ninety (90) days prior to closure activities of the surface impoundment, in violation of LAC 33:VII.713.E.1. The notification was later submitted to the Department in a letter dated November 22, 2002, that addressed closure issues.

C. The Respondent began new construction and modifications to the wastewater treatment process at the facility without written approval from the Department, in violation of LAC 33:VII.517.A.3 and Standard Permit #P-0272, condition 7.

V

In response to the CONOPP, Enforcement No. MM-CN-03-0040, Respondent made a timely request for hearing.

VI

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

VII

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of FIFTY THOUSAND THREE HUNDRED TWENTY AND NO/100 DOLLARS (\$50,320.00) of which One Thousand Seventy-Eight and 98/100 Dollars (\$1,078.98) represents DEQ's enforcement costs, in settlement of the claims set forth in this agreement. The total amount of money expended by Respondent on cash payments to DEQ as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

VIII

Respondent further agrees that the Department may consider the inspection report(s), the Consolidated Compliance Orders and Notices of Potential Penalty and this Settlement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action Respondent shall

be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history.

IX

This agreement shall be considered a final order of the secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement, except such review as may be required for interpretation of this agreement in any action by the Department to enforce this agreement.

X

This settlement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in LSA- R. S. 30:2025(E) of the Act.

XI

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Caddo parish. The advertisement, in form, wording, and size approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted a proof-of-publication affidavit to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

XII

Payment is to be made within ten (10) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Payments are to be made by check, payable to the Department of Environmental Quality, and mailed or delivered to the attention of Darryl Serio, Office of Management and Finance, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303. Each payment shall be accompanied by a completed Settlement Payment Form (Exhibit A).

XIII

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XIV

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his/her respective party, and to legally bind such party to its terms and conditions.

KANSAS CITY SOUTHERN RAILWAY COMPANY

BY: Arthur R. Carmody, Jr.
(Signature)

Arthur R. Carmody, Jr.
(Printed or Typed)

TITLE: Attorney and Registered Agent

THUS DONE AND SIGNED in duplicate original before me this 3rd day of
December, 2004, at Shreveport, Louisiana

Linda G. Bahm, ID # 61135
Notary Public, Caddo Parish, Louisiana
My Commission is for Life

Linda G. Bahm
NOTARY PUBLIC (ID # 61135)

Linda G. Bahm
(Printed or Typed)

STATE OF LOUISIANA
Mike D. McDaniel, Ph.D., Secretary
Department of Environmental Quality

BY: Harold Leggett
Harold Leggett, Ph.D., Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 10th day of
March, 2005, at Baton Rouge, Louisiana.

Randall S. Beard
NOTARY PUBLIC (ID # 27771)

Randall S. Beard
(Printed or Typed)

Approved: Harold Leggett
Harold Leggett, Ph.D., Assistant Secretary



CHARLES C. FOTI, JR.
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

P.O. BOX 94005

BATON ROUGE

70804-9005

February 24, 2005

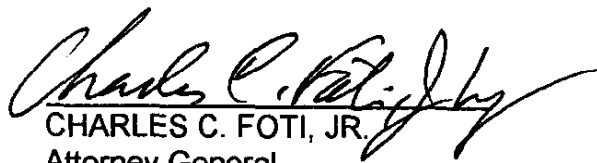
Mr. Herman Robinson, Executive Counsel
La. Department of Environmental Quality
Legal Affairs Division
P.O. Box 4302
Baton Rouge, LA 70821-4302

Re: AG Review of DEQ Settlement;
Kansas City Southern Railway Company
WE-CN-00-0006 and MM-CN-03-0040

Dear Mr. Robinson:

Pursuant to the authority granted to me by Art. IV, Sec. 8 of the state constitution and R.S. 30:2050.7(E)(2)(a), I approve the above referenced settlement.

Sincerely,


CHARLES C. FOTI, JR.
Attorney General

CCF/mlc